

Why Regulate the Sale of E-cigarettes?

New York State only minimally regulates who may sell e-cigarettes and similar devices,¹ which has contributed to the proliferation of e-cigarette outlets and marketing. E-cigarettes are heavily marketed (including in the retail environment) and studies confirm that e-cigarette marketing is particularly appealing to youth.² E-cigarettes are sold by traditional tobacco outlets, such as gas stations, bodegas, pharmacies, convenience stores, and supermarkets,³ as well as in specialty “vape shops,” which are popping up across the country, particularly in college communities.⁴



E-cigarettes are also sold in outlets where the sale of traditional tobacco products is prohibited or not tolerated, such as shopping mall kiosks and other mobile outlets. While the FDA has imposed limited restrictions on e-cigarette sales (e.g., prohibiting sales to minors, and requiring health warnings on packaging of nicotine-containing e-liquids),⁵ state and local governments may exercise their authority to fill the gaps in federal regulation and regulate e-cigarette product sales alongside those of conventional tobacco products.

Importantly, emerging products like e-cigarettes and similar devices are employing marketing tactics formerly used to promote conventional tobacco products—and which were ultimately proved to cause youth initiation and obscure the devastating health effects of tobacco use.

E-cigarette marketing is contributing to the rapid rise in youth use of the products.⁶ Nicotine exposure by adolescents has potentially serious cognitive and other health consequences, regardless of delivery method.⁷ E-cigarettes comprise the most commonly used tobacco product category among youth both nationally⁸ and in New York.⁹ Nearly 5 million U.S. middle and high school students reported using e-cigarettes in 2015, up from 2.4 million in 2014.¹⁰ Some local New York communities have already included e-cigarettes in their tobacco sales and use regulations.

For more information about e-cigarettes and the rationale for regulating their sale and use, see our technical report, [Local Regulation of E-cigarettes](#).

Review our [technical report on Tobacco Retail Licensing](#) to understand how local governments may regulate where and how tobacco products are sold.

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¹ A bill requiring this registration has passed the New York Legislature, but is still awaiting signature from Governor Cuomo at time of publication. 2017 New York Senate Bill No. 2542, New York Two Hundred Thirty-Ninth Legislative Session.

² Alisa A. Padon, Erin K. Maloney & Joseph N. Cappella, *Youth-Targeted E-cigarette Marketing in the US*, 3 TOB. REGUL. SCI. 95–101, 95 (2017).

³ Youn Ok Lee & Annice E. Kim, “Vape shops” and “E-Cigarette Lounges” Open across the USA to Promote ENDS, 24 TOB. CONTROL 410, 410 (2015); see also Tripp Mickle, *FDA Cloud Hangs Over Vape Shops*, WALL STREET JOURNAL, July 7, 2015, <http://www.wsj.com/articles/SB10130211234592774869404581088451777513530> (last visited Jul 13, 2016).

⁴ Lee and Kim, *supra* note 3; see also Mickle, *supra* note 3.

⁵ Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products, 81 Fed. Reg. 28974 (May 10, 2016) (to be codified at 21 C.F.R. pts. 1100, 1140 & 1143).

⁶ Dale S. Mantey et al., *E-Cigarette Marketing Exposure Is Associated With E-Cigarette Use Among US Youth*, 58 J. ADOLESC. HEALTH OFF. PUBL. SOC. ADOLESC. MED. 686–690 (2016).

⁷ Menglu Yuan et al., *Nicotine and the adolescent brain*, 593 J. PHYSIOL. 3397–3412 (2015).

⁸ Tushar Singh et al., *Tobacco Use among Middle and High School Students — United States, 2011–2015*, 65 MORB. MORTAL. WKLY. REP. 361, 365–366 (2016) (e-cigarettes were the most popular product category among both middle school and high school tobacco users in both 2014 and 2015); LLOYD D. JOHNSTON ET AL., MONITORING THE FUTURE NATIONAL SURVEY RESULTS ON DRUG USE, 1975-2015: OVERVIEW, KEY FINDINGS ON ADOLESCENT DRUG USE. (2016).

⁹ N.Y. DEP’T. OF HEALTH, YOUTH CIGARETTE USE AT ALL-TIME LOW, ENDS USE DOUBLES (2017), https://www.health.ny.gov/prevention/tobacco_control/reports/statshots/volume10/n1_youth_cigarette_and_ends_use.pdf (last visited May 9, 2018) (reporting 20.5 percent of NY high school students were current ENDS users in 2016, while only 4.3 percent were current cigarette users and 10.6 percent were current users of other tobacco products).

¹⁰ E-cigarette use by middle schoolers increased by a factor of 8.8 between 2011 and 2015 (from 0.6 percent of students in 2011 to 5.3 percent of students in 2015), while use by high schoolers increased by a factor of 10.7 (from 1.5 percent to 16.0 percent) during the same time period. See Singh et al., *supra* note 8 at 361 (reporting 4.7 million total student users in 2015); Rene Arrazola et al., *Tobacco Use among Middle and High School Students—United States, 2011–2014*, 64 MORB. MORTAL. WKLY. REP. 381, 381 (2015).

